IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6429 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASHIRAM GHANSHYAMDAS

Versus

STATE OF GUJARAT

Appearance:

MR KV SHELAT for Petitioner

MR MA PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/04/2000

ORAL JUDGEMENT

#. As this petition deserves to be allowed on a short question, it is not necessary to give out detailed facts as well as contentions raised by the learned counsel for the parties.

#. The petitioner is holding the licence for sale of kerosene in Meghaninagar area of Ahmedabad city. His licence was came to be cancelled under the order of Deputy Controller of Food and Civil Supplies Department dated 10/4/89 for committing breach of condition of the licence. Against this order the petitioner preferred an appeal before the Controller, Food and Civil Supplies Department, Ahmedabad. That appeal was also came to be rejected on 31/7/1989. Thereafter, the petitioner got prepared a revision application, against the order of the appellate authority, to be presented to the Deputy Secretary of Food and Civil Supplies Deptt., Gandhinagar.

#. Shri Manubhai B. Bhatt, advocate went to the office of the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar on 14/8/89 to present the revision application. The petitioner states that the revision application is maintainable under clause 12 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. The office of the Deputy Secretary even refused to take the revision application. Hence this Special Civil Application.

#. The petitioner filed affidavit of Mr. Manubhai Bhatt, advocate, in support of the above referred averments. This petition has been admitted after notice to the respondent on 12/10/99 but till day they have not cared to file reply to the same. Interim relief granted by the court is also continued for all these years.

#. The factual averments made in Special Civil Application, more particularly in the affidavit of Mr. Manubhai Bhatt, Advocate, stands uncontroverted hence same are to be taken to be correct. The way and manner in which the office of the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar acted is highly arbitrary and perverse. This is not only arbitrary but unknown to well-settled principles of natural justice and fair play. The Deputy Secretary, or the person in his office could not have refused to accept the presentation of the revision application. The revision lies or does not lie is not a question at this stage. If a litigant bona fidely believes that the revision does lie before that authority, he prepared the revision application and when the advocate went there to present the same the authority concerned has to permit the presentation thereof and if in its opinion it is not maintainable then appropriate order has to be passed thereon. This oral refusal to permit the presentation of revision application by the petitioner through advocate is unknown in our legal system.

#. The learned counsel for the respondent is unable to show whether the revision lies or not. However, I am not expressing any final opinion on this point for the reason that the Deputy Secretary has not decided the matter. He has not permitted the presentation of the revision application and this cannot be allowed to stand. As a result of the aforesaid discussion, this petition succeeds and the same is allowed and the respondent No.1 is directed to permit the presentation of the revision application against the order of the appellate authority and to decide the same in accordance with law by either himself or by the authority to which this revisional powers are delegated. The rule is made absolute accordingly. It is a case where because of the bureaucratic approach of the Deputy Secretary the petitioner who suffered heavy expenses of the litigation, the State of Gujarat is directed to pay Rs.1,500/= towards costs of the Special Civil Application to the petitioner. The Chief Secretary, Government of Gujarat is directed to hold inquiry into the matter and whosoever been held responsible for not even to permit the presentation of the revision application, this cost has to be recovered from the said officer. The compliance of this order to be reported to the court.

(S.K.Keshote, J.)

*Pvv